



00-AFC-14C  
CALIF ENERGY COMMISSION

SEP 30 2005  
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September 30, 2005

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**BY HAND DELIVERY**

Marc S. Pryor  
Compliance Project Manager  
California Energy Commission  
1516 9th Street, MS 15  
Sacramento, CA 95814

**Re: Petition to Amend Condition of Certification, BIO-1  
El Segundo Power Redevelopment Project, 00 AFC-14**

Dear Mr. Pryor:

Pursuant to Title 20, California Code of Regulations, Section 1769, please find enclosed the Petition to Amend Condition of Certification BIO-1, set forth in the El Segundo Power Redevelopment ("ESPR") Final Decision (00-AFC-14). The Petition seeks to amend Condition of Certification BIO-1 and the corresponding payment schedule. More important, the Petition is submitted out of necessity as the only option available to El Segundo Power II LLC ("ESP II") in its effort to maintain the viability of this project. ESPR's desperately needed 630 megawatts of power is vital to the support of the critically constrained Los Angeles region.

Throughout the AFC proceeding, ESP II offered a number of enhancements, many of which were approved in the Final Decision. Some of the substantial benefits that will be realized if the ESPR project is constructed include:

- Extremely efficient gas-fired combined cycle capacity in the heart of the critically constrained Los Angeles electrical load center;
- Ultra-low criteria pollutant emitting power generation utilizing Best Available Control Technology;
- A "repowering" project that re-utilizes existing infrastructure and equipment and conforms to the various state policies that support repowering or redevelopment projects, including:

Oregon  
Washington  
California  
Utah  
Idaho



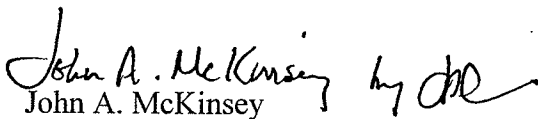
Marc S. Pryor  
September 30, 2005  
Page 2

- meeting the criteria for Assembly Bill 1576, which allows load serving entities to recover the costs of long term procurement of repowering projects (AB1576 was signed into law by the Governor on September 29, 2005);
  - consistency with the California Public Utility Commission's December 16, 2004, Long Term Procurement Order (D04-12-048), which states that repowering projects should be among the first choice for procurement of new supply;
  - consistent with the Energy Commission's own findings in its 2004 IEPR and draft 2005 IEPR regarding support for repowering California's aging fleet of power generating resources.
- Conformity to the greenhouse gas emission performance standards included in the draft 2005 IEPR through ESPR's use of combined cycle natural gas fired equipment. This project further meets the recommendations of Chairman Desmond in his September 22, 2005 memorandum regarding recommendations for greenhouse gas emission standards.

As is further explained in the Petition, amending BIO-1 to connect scheduled payments into trust (an amount reaching \$5,000,000 for the study of the ecological health of the Santa Monica Bay) to start of construction will prevent this important Southern California repowering project from being terminated. Further, the changes to BIO-1 not only support its underlying enhancement goals, but also are well founded in the origin of BIO-1 and its intent.

The possibility of losing both critically needed electricity and a \$5,000,000 trust to develop and implement actions to improve the health of Santa Monica Bay is not in the best interests of the citizens of this State. To that end, ESP II looks forward to explaining and discussing this change in a process leading to the Petition's approval. If you have any questions regarding this submittal, please do hesitate to contact me.

Very truly yours,

  
John A. McKinsey

JAM/mws

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

**In the Matter of:**

El Segundo Power II LLC's  
EL SEGUNDO POWER  
REDEVELOPMENT PROJECT

**Docket No. 00-AFC-14**

**ESP II'S PETITION TO MODIFY  
BIOLOGICAL RESOURCES CONDITION**

**EL SEGUNDO POWER II LLC'S  
PETITION TO  
MODIFY BIOLOGICAL RESOURCES CONDITION**

September 30, 2005

John A. McKinsey  
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Attorneys for El Segundo Power II LLC

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

**In the Matter of:**

El Segundo Power II LLC's  
EL SEGUNDO POWER  
REDEVELOPMENT PROJECT

**Docket No. 00-AFC-14**

**ESP II'S PETITION TO MODIFY  
BIOLOGICAL RESOURCES CONDITION**

**I. Summary of Petition**

Project owner, El Segundo Power II LLC ("ESP II"), of the El Segundo Power Redevelopment Project ("ESPR") 00-AFC-14, respectfully submits this Petition to Amend ("Petition") pursuant to Title 20, California Code of Regulations, Section 1769. The Petition seeks to amend condition of certification BIO-1 as set forth in the Commission's Final Decision, issued December 23, 2004.

BIO-1 requires the project owner to fund a study of ecological conditions of the Santa Monica Bay and develop and implement actions to improve the health of the Bay. ESP II seeks to modify the payment schedule under BIO-1. Specifically, ESP II seeks to link payment for the study to actual steps taken toward construction of this project. The adopted payment schedule language regarding timing appeared unexpectedly, and with little or no explanation, in the Second Revised Presiding Member's Proposed Decision ("Second Revised PMPD"), issued November 2004, nearly four years after ESP II filed its application for certification ("AFC"). Despite this unexpected change, and ESP II's expressed concerns and objections, the timing was further accelerated to its present final form during the December 23, 2004 hearing to adopt the Final Decision. (See Exhibit A at pp. 66-67.)

BIO-1 provides for a project enhancing study; however, it lacks reason to be connected to project approval. The study is not intended to mitigate any potential harm that might be caused by the project. Moreover, the study is not intended to provide any project specific benefits; rather, it is intended to be a general, global benefit to the Santa Monica Bay area as a whole. Further, ESP II remains committed to its obligation to fund the beneficial study described by BIO-1; however, it

does seek to link the payments to the most appropriate event in the advancement of ESPR construction. The changes are necessitated by an inability to date to obtain a commitment from load serving entities to contract for the capacity of the project despite the significant need for new megawatts within the southern California load area to maintain grid integrity. Thus, ESP II is being placed in a position to commence enduring major costs prior to the start of construction and prior to the lapse of the three-year period provided by statute to commence construction. In that regard, ESP II's request to amend BIO-1 is reasonable, fundamentally necessary, and will not cause any harm to the environment.

Additionally, changing BIO-1 is in the interest of the citizens of the State of California. The change preserves a valuable and much needed project that will bring significant new and efficient generation capacity to a region that has seen little new generation in decades. Some of the substantial benefits, which will be realized if ESPR is constructed, include:

- Extremely efficient gas-fired combined cycle capacity in the heart of the critically constrained Los Angeles electrical load center;
- Ultra-low criteria pollutant emitting power generation utilizing Best Available Control Technology;
- A "repowering" project that re-utilizes existing infrastructure and equipment and conforms to the various state policies that support repowering or redevelopment projects, including:
  - Meeting the criteria for Assembly Bill 1576, which allows load serving entities to recover the costs for long term procurement of repowering projects (AB 1576 was signed by Governor Schwarzenegger on September 29, 2005);
  - Consistency with the California Public Utility Commission's December 16, 2004, Long Term Procurement Order (D04-12-048), which states that repowering projects should be among the first choice for procurement of new supply;
  - Conforms with the Energy Commission's own findings in its 2004 IEPR Update and draft 2005 IEPR regarding support for repowering California's aging fleet of power generating resources.
- Conforms to the greenhouse gas emission performance standards included in the draft 2005 IEPR through ESPR's use of combined cycle natural gas fired equipment. The

ESPR project further meets the recommendations of Chairman Desmond in his September 22, 2005, memorandum regarding recommendations for greenhouse gas emission standards.

To lose such a valuable project and the accompanying study enhancement because of timing issues would be unfortunate for the citizens of the State of California. Further, the Warren Alquist Act provides three years to commence construction once certification has been obtained. Given the current, temporary, lack of demand or interest in ESPR's capacity, the BIO-1 requirements to immediately begin funding a \$5 million study and improvement program will be the first major expenditure on this project following permitting and is thus tantamount to starting construction. Therefore, BIO-1's timing provision has forced the project owner into a position of determining whether it will – or can - construct this project only 30 days after the decision for the project has been made final.

Given the great need for additional new capacity in the Los Angeles load center, ESPR is clearly a required project despite the current political and market dynamics that prevent its capacity from being contracted. For that reason and the others explained above, ESP II requests modifications to BIO-1. Such modifications, while having no adverse effect on the environment, will maintain the readiness of ESPR to be constructed and the study funded as soon as conditions permit.

## **II. Information Required For Title 20, CCR, Section 1769**

The following information is provided pursuant to the requirements of Title 20 of the California Code of Regulations, section 1769.

### **A. Description of Modifications Sought to BIO-1**

In its current form, BIO-1 requires the project owner to make scheduled payments into trust for the Santa Monica Bay Restoration Commission ("SMBRC"). The trust is set up to fund a study, which will assess the biological and environmental conditions of the Santa Monica Bay and develop and implement actions to improve the ecological health of the Bay. These scheduled payments are to commence "30 days after the Decision becomes final."<sup>1</sup>

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<sup>1</sup> The current BIO-1 reads, in pertinent part, as follows:

"The project owner shall place \$5,000,000 in trust for the Santa Monica Bay Restoration Commission (SMBRC) to assess the ecological condition of the Santa Monica Bay and to develop and implement actions to improve the ecological health of the Bay. At least \$250,000 shall be provided within 30 days after this

The project owner understands that the California Energy Commission Staff ("Staff") interprets the Final Decision to have become final on August 31, 2005, the date the California Supreme Court denied review of the ESPR decision, which was appealed by certain environmental intervenors. ESP II does not object to that interpretation at this time. However, assuming the date is correct, if relief is not granted as requested in this Petition, the first payment into trust of \$250,000 would be due September 30, 2005. Additionally, subsequent payments are also required under BIO-1 in 90 day increments following the first payment. The total expenditures required under BIO-1 are not fixed but rather such payments are subject to an upper limit of \$5,000,000.

ESP II requests that BIO-1 be modified such that the first payment into trust for SMBRC will be required 90 days prior to the start of construction of the facility. Therefore, the condition would read, in pertinent part, as follows:

**BIO-1:** The project owner shall place \$5,000,000 in trust for the Santa Monica Bay Restoration Commission (SMBRC) to assess the ecological condition of the Santa Monica Bay and to develop and implement actions to improve the ecological health of the Bay. At least \$250,000 shall be provided at least 90 days prior to the start of construction of the new generating units ~~within 30 days after this Decision becomes final~~ and an additional sum of at least \$250,000 shall be provided every 90 days thereafter.....<sup>2</sup>

The BIO-1 enhancement was first offered by the applicant during the AFC proceeding as a \$1,000,000 payment to the SMBRC upon achieving commercial operation of the Project, typically a discrete date under typical power purchase agreements, construction agreements and financing documents ("Commercial Operation"). During the third and fourth years of the

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Decision becomes final, and an additional sum of at least \$250,000 shall be provided every 90 days thereafter until \$1 million has been provided. At that time, the SMBRC in consultation with the project owner, shall propose a schedule for the payment of the remaining funds; within 30 days after submittal of the proposed schedule to the CPM, the CPM shall approve a schedule, which may be the SMBC's schedule or a modification thereof. ..."

<sup>2</sup> Exhibit A to this Petition contains a complete versions of BIO-1, as set forth in the Final Decision, and ESP II's proposed amended version.

lengthy permitting process, the ESPR Committee began adjusting BIO-1 to reflect increased commitments from the applicant to provide project enhancements. For most of the project permitting period, nearly all four years, and through the first two versions of the Presiding Member's Proposed Decision ("PMPD"), BIO-1 payments were required to be made upon Commercial Operation. The current timing approach to link BIO-1 payments to the application's approval first appeared in the Second Revised Presiding Member's Proposed Decision issued in November of 2004. (See Exhibit B at pp. 73-74.) The changes described above reflect a compromise such that ESP II is suggesting only that the payment schedule commence with the start of construction, as it was written in the Second RPMPD.

#### **B. Necessity for Modifications to BIO-1**

Notwithstanding its best efforts, ESP II has been completely unsuccessful in attempts to attract any load serving entity to either: a) negotiate a power purchase agreement; or, b) issue a formal request for offers, for energy and capacity from the project, which would encourage the project owners to proceed with the project. Indeed, this past week Southern California Edison abruptly pulled its RFO for new peaking generation because of concerns about how costs for new generation would be treated under the CPUC's scooping decision (bundled ratepayers vs. a wider SP15 class of customers). In the absence of a viable energy and capacity market or a power purchase agreement, the project is not financeable. The refusal of load serving entities to enter into power purchase agreements for newly permitted projects pending a resolution of fears that large customers or blocks of aggregated customers may be allowed to leave their systems and stranding the costs of new power plant purchase agreements has been widely reported in the press, and is the primary cause for ESP II's inability to contract the project to date.

Since ESPR is not financeable at this time, ESP II cannot responsibly make the substantial payments on the schedule required by BIO-1. As explained below, the requested changes to BIO-1 do no harm to the environment. Further, in its current form, there is no requirement that any actual studies or improvements be made under BIO-1 by any particular date, let alone prior to any key event in the development of ESPR. Finally, the changes to BIO-1 do not mean that the studies and improvements will not commence prior to commercial operation of the project. ESPR is a very site constrained project that is also subject to very restrictive construction timing limits. For that reason, it will require several years to construct. Therefore, BIO-1 payments will have been made and subsequent studies should be well underway before Commercial Operation of the project. Moreover, improvements could begin before the project even produces electricity.



For these reasons, the changes to BIO-1 are both necessary and permissible and should be made as soon as possible.

**C. The timing problem with BIO-1 was raised during certification proceeding**

ESP II raised concerns in written and oral communication to the Commission that the accelerated payment schedule would constrict the project and possibly even prevent it from being constructed. Specifically, in ESP II's written comments the project owner noted:

"...the New Revision will jeopardize our ability to provide electricity when and how it is needed, will significantly impede contracting for power sales and financing the new units..."

(Exhibit C, Applicants Comments to the Second Revised PMPD at page 2.)

At the Special Meeting before the Commission on the Second Revised PMPD counsel for ESP II stated:

"...we have a problem with the magnitude, but that's nowhere near the problem we have with the timing. And the reason for this is because this is intended to be folded into financing....it's not capable or able to commit to spending additional money prior to having a contract and financing this project...."

[Exhibit D, Reporter's Transcript at page 27, line 13.]

"...you're asking them to pay that immediately upon certification. And what I'm indicating to you is that is a tremendous problem for us, that we don't have the ability to do that. And that that is a nonstarter for us in terms of actually being able to accomplish this project."

[Exhibit D at page 29, line 10.]

Therefore, insofar as the need for changes to BIO-1 were known at the time of certification, the issues were raised accordingly and appropriately to the full Commission. The Commissioners' deliberation on the timing issue was compressed by the last minute nature of the timing changes themselves and ESP II's comments were never addressed. Further, during the hearing, ESP II, CEC Staff, and the Commission all expressed an understanding that the decision would have to be revisited through the amendment process for changes to air quality permit conditions reasons. (Exhibit D at pp. 43-44.) To that end, ESP II has proceeded accordingly with regard to its Petition to Amend Condition of Certification BIO-1.

**D. ESP II Has Not Been Able to Obtain a Commitment for the Project's Capacity Prior to the First Scheduled Payment**

As was explained above, the changes to BIO-1 are driven by the project owners' inability to obtain a contract for ESPR's capacity or sufficient interest in the project, thereby, making financing possible. This is not to say that ESPR's capacity is not desperately needed. As repeatedly noted by authorities, including the CEC in its Integrated Energy Policy Report 2004 Update, Southern California is desperately short of generation capacity. Events this summer and in past summers have made examples of the vulnerability of Southern California to transmission line problems triggering blackouts, to loss of generation units requiring cutbacks and conservation, and the need for additional generation within the load centers. ESPR will provide that additional generation within the load center; however, the current regulatory environment has prevented, to date, load serving entities from contracting for the capacity. Unless and until market reforms are made in California that produce a viable, competitive market, projects such as ESPR will not be financeable and built; thus, alleviating the risk of blackouts and brownouts. The changes to BIO-1 preserve the viability of ESPR's badly needed generation while the State's energy policy makers attempt to resolve the market uncertainty and subsequent grid unreliability, which is currently plaguing California.

**E. The Proposed Changes to BIO-1 Will Not Have an Adverse Effect on the Environment**

BIO-1 requires the Project Owner to fund a study of the ecological conditions of the Santa Monica Bay. The SMBRC can also use the funds to restore and improve conditions in the Santa Monica Bay. The proposed changes to BIO-1 do not reduce the level of funding nor change the extent to which these improvements will be implemented, but rather amends the timing of scheduled payments under BIO-1. In fact, the changes to BIO-1 will increase the chances that the biological enhancements will be carried out since they maintain the viability of the project.

Moreover, there are no findings in the Final Decision that the studies and improvements provided for in BIO-1 were required by a certain date or event in order to avoid a specific harm to the environment. In fact, ESPR Siting Committee Member, Commissioner Boyd noted at the hearing on the Second Revised PMPD that the flow cap rendered the question of significant impacts completely moot. Commissioner Boyd stated:

“Therefore, the facility, in our opinion, would not cause a physical change to the existing environmental setting, and thus would not significantly impact biological resources through the operation of the ocean cooling system.”

[Exhibit D at p.9, line 6-11.] Emphasis added.

Thus, there is no question that BIO-1, whether included or not, has no effect on the impacts potentially caused by ESPR. ESPR has no impacts from the operation of the cooling system. Instead, BIO-1 was conceived of as a general enhancement, assurance provision that was initially offered by the applicant in an effort obtain the permit on an expedited basis. Further, the most logical link between BIO-1's studies and improvements and ESPR would be the commencement of commercial operation, since that is when the new plant would be actually drawing upon the Santa Monica Bay. Even then, no impacts would occur instantaneously, if at all, and as proposed in the changes to BIO-1, the funding of the studies and improvements would begin prior to construction, an extensive period of time that will allow the studies to be completed, should the SMBRC desire to complete them quickly. BIO-1, however, does not set any deadlines whatsoever for the studies nor does it require any specific improvements that would relate to the nature of once thru cooling impacts. Thus, BIO-1 in its present form does not require that any studies or improvements resulting from BIO-1 be accomplished in a way that could conceivably offset any impacts from ESPR (whether such impacts actually exist after application of the flow cap). Finally, as explained above, the changes to BIO-1 preserve this project and thus make the benefits of BIO-1 more likely. For all these reasons, the changes to BIO-1 will not only have no adverse effect on the environment, but actually increase the likelihood of positive effects. Thus concerns over impacts to the environment need not be considered when the CEC adopts the changes to BIO-1 proposed herein.

**F. The Proposed Changes to BIO-1 Will Not Affect the Facility's Ability to Comply with Applicable Laws, Ordinances, Regulations, and Standards**

There are no laws, ordinances, regulations or standards (“LORS”) requiring the studies or improvements described in BIO-1. At best, it could be argued that the “maintain, enhance and restore” provisions of Public Resources Code Section 30231 relate to BIO-1 or that the pending implementation of Clean Water Act Section 316(b) regulations might require intake improvements. Neither of those laws or ordinances, however, expressly requires the studies as outlined in BIO-1, nor do they require any specific timing for payments. While the decision contains language that discusses the BIO-1 improvements in relation to 316(b) and Public Resources Code Section 30231, there are no findings in the Final Decision that state that the

studies and improvements under BIO-1 are expressly necessary for compliance with those laws or regulations. Further, there is absolutely no discussion, or findings relating to the timing of the funding of the studies and improvements to those laws and regulations. In fact, the current form of the timing was changed *sua sponte* by the Commission at the hearing for approval of the project with no explanation of why any particular timing was necessary. For all these reasons, the changes to BIO-1 would not change the facility's compliance with applicable LORS.

**G. The Proposed Changes to BIO-1 Will Positively Benefit the Public by Preserving an Important Project that will Provide Much Needed Generation Capacity to the Southern California Region**

Akin to the ways in which the changes to BIO-1 actually positively benefit the environment, the changes to BIO-1 also, if anything, positively benefit the public by preserving the prospect of the Santa Monica Bay studies and improvements. ESPR itself, also contain many enhancements intended to benefit the public. For instance the project will improve the beach bike path in front of the existing facility and will provide extensive landscaping around the entire perimeter. The project will also remove the fuel oil storage tanks no longer in use at the facility. For these reasons, the changes to BIO-1 positively benefit the public.

**H. No Specific Property Owners are Potentially Affected by the Proposed Modifications to BIO-1**

The changes to BIO-1 do not change any design parameter, characteristics or operational features of ESPR. In fact, the underlying studies and improvements could occur anywhere in the Santa Monica Bay. For these reasons, there are no affected property owners to notify.

**I. Proposed Modifications to BIO-1 Will Not Adversely Affect Nearby Property Owners, the Public or Parties to the Application Proceeding**

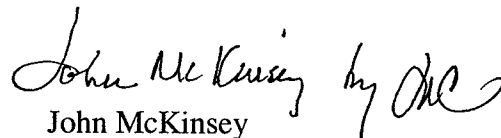
The changes to BIO-1 do not change any design parameters, characteristics or operational features of ESPR. In fact, the underlying studies and improvements could occur anywhere in the Santa Monica Bay. For these reasons, local property owners are unaffected. Parties to the proceeding, and several agencies expressed an interest in or commented upon the biological resources aspects of ESPR and may be interested in these changes. The current service list for 00-AFC-14 is the most appropriate list to use in informing parties regarding this petition. The current service list is attached as Exhibit E.

## Conclusion

The proposed changes to BIO-1 are not intended to abdicate the responsibility of ESP II to fund the BIO-1 study. It is, rather, intended to preserve both the study that BIO-1 provides as well as the project itself. The proposed changes recognize the need for more time for the CPUC and/or Legislature to adopt market reforms to address the concerns of the load serving entities so that the project owner can obtain commitments or contracts for the capacity of the project, time that, by law, should be available for the full three years a project owner has to commence a project following certification. The changes to BIO-1 do not implicate any impacts of the project nor do they cause the project to violate any LORS. In fact, the changes to BIO-1 serve the public, the people of the State of California, and the environment. For these reasons, the changes to BIO-1 requested by ESP II should be promptly approved. Failure by the Energy Commission to approve the BIO-1 condition amendment will force the project owner to terminate the approved permit application for ESP II and, thus, risk jeopardizing the integrity of the California electrical grid system at a time when it requires significant new generation infrastructure.

Date: September 30, 2005

Respectfully Submitted,

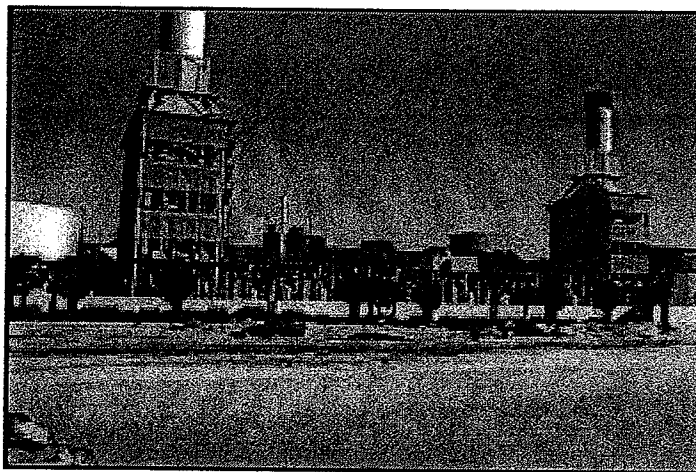
A handwritten signature in cursive script, appearing to read "John McKinsey by [initials]".

John McKinsey  
Stoel Rives LLP  
Attorneys for Project Owner  
El Segundo Power II, LLC

EXHIBIT "A"

# **EL SEGUNDO POWER REDEVELOPMENT PROJECT**

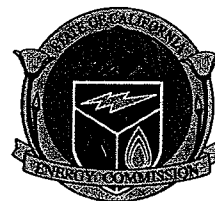
**Application For Certification (00-AFC-14)  
Los Angeles County, California**



**CALIFORNIA  
ENERGY  
COMMISSION**

**COMMISSION DECISION**

**FEBRUARY 2005  
CEC-800-2005-001-CMF**



The Commission rejects Staff's attempt, using the argument that *any* withdrawal of seawater in such amounts is adverse, to find a significant cumulative impact by combining project impacts with existing stressors in Santa Monica Bay. These *existing* stressors are not separate, potential "projects" as required for a cumulative CEQA analysis. Instead, they are part of the existing environment. [CEQA Guidelines §§ 15355, 15130(a)(1).]

By requiring an annual flow cap of 126.78 billion gallons per year, the Commission has found for the reasons stated above that, as a matter of law, no direct or indirect significant impacts will result from the operation of the project cooling system. Additionally, when examining the project with an annual flow cap of 126.78 billion gallons per year, in conjunction with other projects in the region, the Commission finds that no cumulative significant impact will result from "other closely related past, present, and reasonably foreseeable future projects." (CEQA Guidelines section 15355(b))

The proposed project does not provide any incremental impacts to riparian habitat. (Applicant's Writ. Test. Exh. B.)

## **Conclusion**

In sum, we find and conclude that the project, with the Conditions of Certification adopted herein, will not cause a significant adverse impact on the aquatic biological environment, will comply with the federal Clean Water Act, will comply with the California Coastal Act, and will implement the recommendations of the Coastal Commission.

## **CONDITIONS OF CERTIFICATION**

**BIO-1:** The project owner shall place \$5,000,000 in trust for the Santa Monica Bay Restoration Commission (SMBRC) to assess the ecological condition of the Santa Monica Bay and to develop and implement actions to improve the ecological health of the Bay. At least \$250,000 shall be provided within 30 days after this Decision becomes final, and an additional sum of at least \$250,000 shall be provided every 90 days thereafter until \$1 million has been provided. At that time, the SMBRC in consultation with the project owner, shall propose a schedule for the payment of the remaining funds; within 30 days after submittal of the proposed schedule to the CPM, the CPM shall approve a schedule, which may be the SMBRC's schedule or a modification thereof. The project owner shall comply with the approved schedule. The funds shall be spent as directed by the SMBRC, after consultation with the CPM and the Los Angeles Regional Water Quality Control Board, for the purposes of assessing the ecological condition of the Santa Monica Bay and developing and implementing actions to improve the ecological health of the Bay. To the maximum extent feasible in keeping with those purposes, the studies conducted shall be designed to assist the LARWQCB in carrying out its responsibilities under section 316(b) of the Clean Water Act, for this project and other activities affecting Santa Monica Bay. If any funds remain unspent upon beginning



of commercial operation, the project owner may petition the Energy Commission for return of those unspent funds to the project owner.

**Verification:** The project owner shall submit to the CPM a copy of the receipt transferring funds as required by this Condition. The project owner shall provide to the CPM a copy of any studies carried out under this Condition.

**BIO-2:** In consultation with the LARWQCB, the project owner shall conduct a study to determine the feasibility of constructing, deploying, and operating an aquatic filter barrier at intake #1 at ESGS. The feasibility study shall also determine expected benefits and potential impacts of the aquatic filter barrier if deployed and operated at intake #1. The feasibility study shall be submitted to the LARWQCB for possible use in implementing regulations under 316(b) of the Clean Water Act. If the LARWQCB finds that it is feasible to construct and operate an aquatic filter barrier and that the ESGS intake #1 site is suitable for a demonstration and orders the project owner to install an aquatic filter barrier on intake #1 in compliance with applicable 316(b) regulations, the project owner shall construct and operate the aquatic filter barrier.

**Verification:** The project owner shall submit to CPM and the LARWQCB a complete analysis and all results of the feasibility study as part of the evaluation involved in implementing applicable 316(b) regulations.

**BIO-3:** Upon the commencement of commercial operations of Units 5, 6, and 7, water flows for intakes #1 and #2 combined shall not exceed 126.78 billion gallons per year and shall also be subject to monthly flow volumes not to exceed 7.961 billion gallons in February, 8.313 billion gallons in March, and 8.524 billion gallons in April of any year.

**Verification:** Project owner shall send to the CPM copies of the project's quarterly reports to the LARWQCB, including: (1) daily cooling water flows calculated from the measured capacity of each pump; (2) each pump's daily hours of operation; (3) each pump's annual average volume; and (4) average-hourly effluent temperature data. The data shall be presented graphically to illustrate the daily pump volume totals over time.

**BIO-4:** Project owner shall provide information demonstrating that a valid NPDES permit has been issued prior to operation of the project. The valid NPDES permit and its terms and conditions shall be incorporated into this Decision, except for flow cap provisions, unless those in the NPDES permit are stricter than the flow caps required under **BIO-3**

**Verification:** Project owner shall report to the CPM all communication efforts with the LARWQCB regarding NPDES permit renewal or compliance. Project owner shall provide to the CPM all data and analysis supporting any 316(b) study performed. Project owner shall consult with the LARWQCB, the Coastal Commission, Energy Commission staff, Santa Monica Bay Restoration Commission, and the Santa Monica Bay Keepers to develop the appropriate design for any 316(b) study.



**CALIFORNIA  
ENERGY  
COMMISSION**

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## **ADOPTION ORDER UPON RECONSIDERATION**

**No. 05-0202-01**

**EL SEGUNDO POWER REDEVELOPMENT PROJECT  
APPLICATION FOR CERTIFICATION  
DOCKET NO. 00-AFC-14**

On December 23, 2004, the Commission granted certification of this project as set forth in an Adoption Order dated and executed on December 23, 2004. Pursuant to Public Resources Code section 25530, which allows the Commission to reconsider its Decision on its own motion within 30 days, the Commission heard a motion to reconsider by Commissioner Geesman on January 19, 2005 and voted to reconsider the substance of the Decision at a further public hearing on February 2, 2005. Upon reconsideration, the Commission readopts its Decision granting certification but adds override findings pursuant to Public Resources Code section 25525 to make the resolution of Coastal Act issues consistent with our Decision in the Morro Bay Application for Certification. As set forth below, the effect of this reconsideration is to extend the period in which parties may petition for reconsideration or seek judicial review of this new Decision.

The Commission adopts this Decision on the El Segundo Power Redevelopment Project and incorporates the 2<sup>nd</sup> Revised Presiding Member's Proposed Decision, as amended by the errata proposed by the Committee at the December 23, 2004 hearing as well as items proposed by commissioners in their discussion of the matter on December 23<sup>rd</sup> and, in addition, the Commission's findings under Public Resources Code section 25525. This Decision is based upon the record of the proceeding (Docket No. 00-AFC-14).

The Commission hereby adopts the following findings in addition to those contained in the accompanying text:

1. The Conditions of Certification contained in this Decision, if implemented by the project owner, ensure that the whole of the project will be designed, sited and operated in conformity with applicable local, regional, state, and federal laws, ordinances, regulations, and standards, including applicable public health and safety standards, and air and water quality standards.
2. Implementation of the Conditions of Certification contained in the accompanying text will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility. The Conditions of Certification also assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative adverse environmental impacts.

3. Existing governmental land use restrictions are sufficient to adequately control population density in the area surrounding the facility and may be reasonably expected to ensure public health and safety.
4. The record does not establish the existence of any environmentally superior alternative site.
5. The analysis of record assesses all potential environmental impacts associated with the project.
6. This Decision contains measures to ensure that the planned, temporary, or unexpected closure of the project will occur in conformance with applicable laws, ordinances, regulations, and standards.
7. The Commission finds that the recommendations of the California Coastal Commission, pursuant to Public Resources Code section 30413(d), to adopt the staff-proposed Hyperion wastewater cooling alternative or, alternatively, to conduct a Section 316(b) study (or a study similar to a 316(b) study) of the intake of this facility prior to licensing, would result in greater impact to the environment compared to the proposed project with the conditions which are incorporated in this Decision (including but not limited to the funding of a Bay-wide study of the environmental conditions in the Santa Monica Bay and potential implementation measures to enhance and restore its biological health) and that the Hyperion alternative is infeasible.
8. In recognition that the Coastal Commission and other parties have asserted that, notwithstanding our finding the contrary, the project will not comply with the Coastal Act and the Local Coastal Plan, the Commission finds, pursuant to its authority under Public Resources Code section 25525 and based on the record in this proceeding, that the project is required for the public convenience and necessity and that there is no more prudent and feasible means of achieving that public convenience and necessity. To the extent that there is any inconsistency between the project as conditioned in this decision and the Coastal Act or the Local Coastal Plan, we expressly override those LORS.
9. The proceedings leading to this Decision have been conducted in conformity with the applicable provisions of Commission regulations governing the consideration of an Application for Certification and thereby meet the requirements of Public Resources Code, sections 21000 et seq., and 25500 et seq.

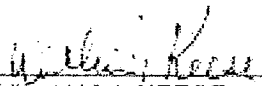
Therefore, the Commission **ORDERS** the following:

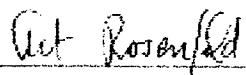
1. The Application for Certification of the El Segundo Power Redevelopment Project in El Segundo, California, as described in this Decision, is hereby approved, and a certificate to construct and operate the project is hereby granted.
2. The approval of the Application for Certification is subject to the timely performance of the Conditions of Certification and Compliance Verifications enumerated in the accompanying text. The Conditions and Compliance Verifications are integrated with this Decision and are not severable therefrom. While the project owner may delegate the performance of a

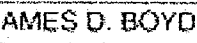
Condition or Verification, the duty to ensure adequate performance of a Condition or Verification may not be delegated.

3. The Commission hereby adopts the Conditions of Certification, Compliance Verifications, and associated dispute resolution procedures as part of this Decision in order to implement the compliance monitoring program required by Public Resources Code section 25532. All Conditions in this Decision take effect immediately upon adoption and apply to all construction and site preparation activities including, but not limited to, ground disturbance, site preparation, and permanent structure construction.
4. The Commission uses its authority as provided in Public Resources Code section 25523(b) not to include the specific requirements recommended by the Coastal Commission in its report pursuant to Public Resources Code section 30413(c) by finding that the adoption of those provisions would result in greater adverse effect on the environment when compared to implementation of the project, as conditioned in this decision, or would be infeasible.
5. The decision is adopted on February 2, 2005, consistent with Public Resources Code section 25530 and California Code of Regulations, title 20, section 1720.4.
6. Any petition requesting Commission reconsideration of this Decision (or any determination by the Commission on its own motion to reconsider) shall be filed and served on or before March 4, 2005, which is the 30th day after the date of adoption. (Pub. Resources Code section 25530.)
7. Judicial review of certification decisions is governed by Sections 25531 of the Public Resources Code.
8. The Executive Director of the Commission or delegatee shall transmit a copy of this Decision and appropriate accompanying documents as provided by Public Resources Code section 25537 and California Code of Regulations, title 20, section 1768.

Dated February 2, 2005, at Sacramento, California.

  
WILLIAM J. KEESE  
Chairman

  
ARTHUR H. ROSENFELD  
Commissioner

Absent  
  
JAMES D. BOYD  
Commissioner

  
JOHN L. GEESMAN  
Commissioner

  
JACKALYNE PFANNENSTIEL  
Commissioner

**ESP II's Amendment to BIO-1 will Change the Condition will read as follows:**

**BIO-1:** The project owner shall place \$5,000,000 in trust for the Santa Monica Bay Restoration Commission (SMBRC) to assess the ecological condition of the Santa Monica Bay and to develop and implement actions to improve the ecological health of the Bay. At least \$250,000 shall be provided at least 90 days prior to the start of construction of the new generating units ~~within 30 days after this Decision becomes final~~ and an additional sum of at least \$250,000 shall be provided every 90 days thereafter until \$1 million has been provided. At that time, the SMBRC in consultation with the project owner, shall propose a schedule for the payment of the remaining funds; within 30 days after submittal of the proposed schedule to the CPM, the CPM shall approve a schedule, which may be the SMBRC's schedule or a modification thereof. The project owner shall comply with the approved schedule. The funds shall be spent as directed by the SMBRC, after consultation with the CPM and the Los Angeles Regional Water Quality Control Board, for the purposes of assessing the ecological condition of the Santa Monica Bay and developing and implementing actions to improve the ecological health of the Bay. To the maximum extent feasible in keeping with those purposes, the studies conducted shall be designed to assist the LARWQCB in carrying out its responsibilities under section 316(b) of the Clean Water Act, for this project and other activities affecting Santa Monica Bay. If any funds remain unspent upon beginning of commercial operation, the project owner may petition the Energy Commission for return of those unspent funds to the project owner.

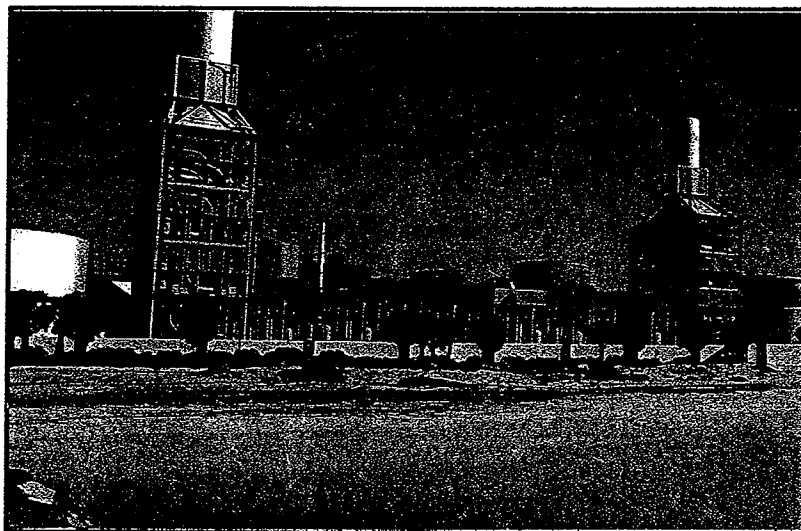
**Verification:** The project owner shall submit to the CPM a copy of the receipt transferring funds as required by this Condition. The project owner shall provide to the CPM a copy of any studies carried out under this Condition.

EXHIBIT "B"

CALIFORNIA  
ENERGY  
COMMISSION

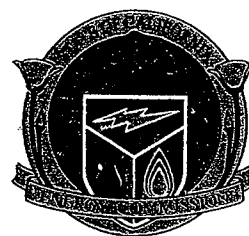
# EL SEGUNDO POWER REDEVELOPMENT PROJECT

Application For Certification (00-AFC-14)  
Los Angeles County, California



## 2nd REVISED PRESIDING MEMBER'S PROPOSED DECISION

NOVEMBER 2004  
(P800-04-016)



## EXECUTIVE SUMMARY:

Recommend:  
**APPROVAL**  
**WITH CONDITIONS**

The El Segundo Redevelopment Project AFC Committee of the Energy Commission recommends approval of El Segundo Power II LLC's proposed 630-megawatt (MW) combined-cycle facility in El Segundo, California, together with the following highlighted measures to mitigate potential environmental and community impacts and comply with applicable laws, ordinances, regulations and standards (LORS):

### **ENERGY RESOURCES:**

- ✓ The proposed project will replace 1950's vintage generating units with state-of-the-art combined-cycle technology resulting in optimized resource efficiency.
- ✓ The project will use natural gas via an existing pipeline.

### **LAND USE:**

- ✓ The proposed project will reuse existing generating station infrastructure and property already zoned for and being used to generate electricity.
- ✓ The bike path recreational use in front of power plant will be enhanced through a setback of the fence/seawall, added landscaping and benches.

### **AIR QUALITY:**

- ✓ The power plant will use state-of-the-art Best Available Control Technology to minimize emissions.
- ✓ Complete offsets will be used to compensate for any pollutant for which the South Coast Air Quality Management District determines that it is in non-attainment.

### **WATER RESOURCES:**

- ✓ The proposed project will use sea water for cooling purposes in a once-through system and reclaimed water for most other water needs thus providing a net reduction in potable water consumption at the generating station.

### **BIOLOGY**

- ✓ The proposed project sea water cooling system will be subject to an annual flow cap of 126.78 billions gallons, with specific caps applied to the months of February, March and April.
- ✓ Stringent federal Clean Water Act intake structure regulations will be applied to the station through its 2005 NPDES permit renewal process. As a result, the project will be required to



reduce entrainment through cooling water intake #1 by at least 60 percent compared to an unmitigated system.

- ✓ The project owner will conduct a study to evaluate the potential for utilizing aquatic filter barrier technology to eliminate entrainment of marine organisms at the generating station and, if feasible, install the filter barrier.
- ✓ The project owner will provide \$45 Million in trust to the Santa Monica Bay Restoration Commission to understand the biological dynamics of the Santa Monica Bay and improve the health of the Bay's habitat.

#### **VISUAL**

- ✓ The proposed project includes perimeter landscaping, a seawall, and a landscaped berm to screen views. Views of the power plant will be screened while maintaining appropriate ocean and scenic views.
- ✓ The proposed project lowers exhaust stack height for two of the four exhaust stacks at the generating station.
- ✓ The new facility and the remaining units will have shielded and directed lighting to minimize glare.
- ✓ The proposed project will be color and architecturally-treated including colored panels on higher elevations to provide architectural screening.

#### **NOISE**

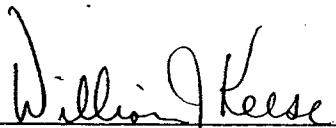
- ✓ Construction and demolition activities on the tank farm portion of the power plant will be conditioned to ensure minimal disturbance of the residential area to the south.
- ✓ Project owner shall conduct before and after noise surveys to ensure that the project does not cause sound levels at the nearest residential receptor to increase by more than 2 decibels.


#### **HAZARDOUS MATERIALS**

- ✓ Ammonia will be delivered to the power plant via a new pipeline from the Chevron refinery eliminating the normal truck deliveries of ammonia.

**Dated: November 23, 2004**

#### **ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION**

  
\_\_\_\_\_  
WILLIAM J. KEESE  
Chairman and Presiding Member  
El Segundo AFC Committee

  
\_\_\_\_\_  
JAMES D. BOYD  
Commissioner and Associate Member  
El Segundo AFC Committee

~~owner shall construct and operate the aquatic filter barrier as directed by the LARWQCB. Condition: BIO-2.~~

- ☒ ~~**Annual and Seasonal Flow Cap:** The Applicant shall implement an annual cap on flow of 126.78 billion gallons on the combined total of all units at the El Segundo Generating Station and monthly caps of 9.4 billion gallons (February), 9.8 billion gallons (March), and 10.0 billion gallons (April) for a combined usage of all cooling water systems of the El Segundo Generating Station. In addition, the Applicant shall comply with all flow caps, of whatever duration, required by the applicable NPDES permit.~~

~~If future NPDES permitting establishes that an annual flow cap is not necessary to avoid significant impacts, then the Applicant may apply for and may receive changes to this Condition of Certification that removes the annual flow cap requirement. Condition: BIO-3.~~

- ☒ ~~**316(b) Study & Entrainment and Impingement Reduction:** Prior to commencement of commercial operation, the project owner shall reduce entrainment through the ESGS cooling water intake #1 by at least 60 percent from unmitigated levels and impingement by at least 80 percent, both from unmitigated levels, as directed and required by the LARWQCB under section 316(b) of the federal Clean Water Act. Pursuant to the implementation of federal regulations enacted under section 316(b) of the Clean Water Act and at the direction of the LARWQCB, Applicant shall conduct a study of the entrainment effects of intake #1. While recognizing the authority of the LARWQCB to determine the final 316(b) study design, the Commission directs the Applicant to consult with other agencies, including the California Coastal Commission, the National Marine Fisheries Service, and the California Department of Fish and Game, as well as the CPM in the development of the 316(b) study design.~~

## Findings

~~With the below Conditions of Certification, the project conforms with applicable laws related to biological resources, and there are no potentially significant adverse impacts to biological resources.~~

## CONDITIONS OF CERTIFICATION

**BIO-1:** Prior to commercial operation, The project owner shall place \$15,000,000 in trust to for the Santa Monica Bay Restoration Commission (SMBRC) to assess the ecological condition of the Santa Monica Bay and to develop and implement actions to improve the ecological health of the Bay. At least \$1 million shall be provided within 180 days after this Decision becomes final. At that time, the SMBRC in consultation with the project owner, shall propose a schedule for the payment of the remaining funds; within 30 days after submittal of the proposed schedule to the CPM, the CPM shall approve a schedule, which may be the SMBRC's schedule or a modification thereof. The project owner shall

~~comply with the approved schedule. Use of the funds in trust must be restricted to improving understanding of the biological dynamics of Santa Monica Bay and for purposes of improving the health of the Santa Monica Bay biological habitat. This could include fish population studies, entrainment studies, or other studies approved by the Santa Monica Bay Restoration Project that focus on the Santa Monica Bay habitat. The funds in trust shall be administered by the Santa Monica Bay Restoration Commission, whose authority in determining the use of the funds shall be absolute. The Santa Monica Bay Restoration Commission shall have the responsibility to publish the results of any study(ies) conducted, and to account for the disposition of the funds in trust in a timely and detailed manner. The funds shall be spent as directed by the SMBRC, after consultation with the CPM and the Los Angeles Regional Water Quality Control Board, for the purposes of assessing the ecological condition of the Santa Monica Bay and developing and implementing actions to improve the ecological health of the Bay. To the maximum extent feasible in keeping with those purposes, the studies conducted shall be designed to assist the LARWQCB in carrying out its responsibilities under section 316(b) of the Clean Water Act, for this project and other activities affecting Santa Monica Bay. If any funds remain unspent upon beginning of commercial operation, the project owner may petition the Energy Commission for return of those unspent funds to the project owner.~~

**Verification:** ~~The project owner shall submit to the CPM a copy of the receipt transferring funds as required by this Condition. the stipulated amount to the Santa Monica Bay Restoration Commission. If the Santa Monica Bay Restoration Commission conducts and publishes study(ies), the project owner shall provide to the CPM a copy of any studies carried out under this Condition. such study(ies) to the CPM.~~

**BIO-2:** ~~In consultation with the Los Angeles Regional Water Quality Control Board LARWQCB, the project owner shall conduct a study to determine the feasibility of constructing, deploying, and operating an aquatic filter barrier at intake #1 at ESGS. The feasibility study shall also determine expected benefits and potential impacts of the aquatic filter barrier if deployed and operated at intake #1. The feasibility study shall be submitted to the Los Angeles Regional Water Quality Control Board LARWQCB for possible use in implementing regulations under 316(b) of the Clean Water Act. If the Los Angeles Regional Water Quality Control Board LARWQCB finds that it is feasible to construct and operate an aquatic filter barrier and that the ESGS intake #1 site is suitable for a demonstration and orders the project owner to install an aquatic filter barrier on intake #1 in compliance with applicable 316(b) regulations, the project owner shall construct and operate the aquatic filter barrier.~~

**Verification:** ~~The project owner shall submit to CPM and the LARWQCB a complete analysis and all results of the feasibility study as part of the evaluation involved in implementing applicable 316(b) regulations.~~

**BIO-3:** ~~The project owner shall implement an annual cap on flow on the combined total of Intake #1 and Intake #2 of 126.78 billion gallons and shall also cap the monthly flow volumes in February at 9.4 billion gallons, March 9.8 billion gallons and April at 10.6 billion gallons. If future NPDES permitting establishes that an annual flow cap is no~~

EXHIBIT "C"



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December 21, 2004

**00-AFC-14**

CALIF ENERGY COMMISSION

**DEC 21 2004**

RECEIVED IN DOCKETS

**BY ELECTRONIC AND HAND SERVICE**

**William J. Keese**  
Chairman & Presiding Member  
**James D. Boyd**  
Commissioner & Associate Member  
Siting Committee, 00-AFC-14  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**Re: Applicant's Comments to the Second Revised Presiding Member's Proposed Decision (00-AFC-14)**

Dear Chairman Keese:

El Segundo Power II LLC ("ESP II" or "Applicant") respectfully submits these comments to the California Energy Commission ("CEC") Siting Committee ("The Committee")'s Second Revised Presiding Members Proposed Decision ("RRPMPD" or "New Revision") for the El Segundo Power Redevelopment ("ESPR") Application for Certification ("AFC") proceeding, 00-AFC-14.

The New Revision introduces a number of new conditions, one of which immediately restricts the operability of the existing El Segundo Generating Station ("ESGS") during a critical time of generation need for California. While some other conditions may also be negotiable (see Attachment 1 for specific comments) three are so burdensome that the Applicant must object to them. Those three conditions are (1) timing of implementing flow caps on existing generators, (2) duration of the flow caps, and (3) timing of payment of mitigation study funds. If the Commission cannot modify the RRPMPD at the December 23, 2004 special meeting for approval of ESPR, the Applicant requests that the Commission return the RRPMPD to the Committee for modification in keeping with these comments.

Oregon  
Washington  
California  
Utah  
Idaho



Applicant's Comments to ESPR Second Revised PMPD

December 21, 2004

Page 2

The New Revision does immediate harm to the people of California because it reduces the generation of electricity in the Los Angeles western basin while supplies are still seriously constrained. Further, the New Revision will jeopardize our ability to provide electricity when and how it is needed, will significantly impede contracting for power sales and financing the new units, and will also likely have a chilling effect on other potential new generation. Immediate implementation of flow caps on existing ESGS Units 3 and 4 lacks any legal rationale or environmentally focused connection to the repowering project

The specific, needed, minimal changes to the RRPMPD, as explained in Attachment 1 to this letter, are:

- 1) **The cooling flow limits in BIO-4 should be effective upon commercial operation of the new units.** *As proposed, this condition would directly restrict power output that would otherwise be available to help address California's immediate critical needs.*
- 2) **The cooling flow limits should be lifted once new Phase II 316(b) regulations have been implemented and satisfied at ESGS and the project owner has requested the removal of the limits.** *This is appropriate because the entrainment reductions necessary to comply with Phase II 316(b) will meet the same intent as the flow cap.*
- 3) **The \$1 Million payment under BIO-1 should be tied to the start of construction, not the effective date of the decision.** *These payments are not necessary to comply with any law or requirement and are not aligned with the expected course of contracting the output and financing the construction of this power plant.*

These changes will redress the unacceptable new impositions in the New Revision (see Attachment 2 for detailed changes to the Conditions of Certification).

There are other surprising, legally unsupported, and possibly problematic conditions within the RRPMPD that ESP II also explains below. While these other problems should be addressed now, or perhaps, in subsequent efforts to adjust the decision, the three issues addressed above are the minimal changes that the law requires and the Applicant seeks to render this decision acceptable.

ESPR is an important project for the State of California because it is an environmentally beneficial project that makes use of an existing facility to efficiently and cleanly provide critical generation in the Los Angeles load center. ESPR also brings significant enhancements and improvements to ESGS, most of which have been agreed upon by all stakeholders in the process.



Applicant's Comments to ESPR Second Revised PMPD

December 21, 2004

Page 3

After four years of process, it would be unfortunate not to complete this project approval promptly. Nevertheless, the RRPMPD requires these basic minimum changes in order to respect the law and serve the public policy and interests of California.

For the reasons articulated below, ESP II respectfully requires you to make these needed and fair changes to the RRPMPD prior to its final approval on December 23, 2004. Should you conclude that you cannot make these changes on December 23, 2004 then ESP II respectfully requests that you withdraw the proposed decision from consideration on December 23, make the required changes to the decision, and then resubmit the proposed decision to the full Commission for approval.

ESP II appreciates The Committee's continued attention to completing the siting process for ESPR.

Very truly yours,

/s/

John A. McKinsey

JAM:er  
Attachments

**ATTACHMENT 1  
APPLICANT'S SPECIFIC COMMENTS ON THE RRPMPD**

**THERE IS NO REASON, LEGALLY OR ENVIRONMENTALLY, TO IMPOSE THE FLOW CAP NOW AND DOING SO HARMS THE INTERESTS OF THE PEOPLE OF CALIFORNIA**

ESPR involves the continued use of the studied, permitted, and operating Cooling Intake #1 at ESGS. Cooling Intake #1 is permitted to use up to 208 million gallons per day (MGD) by the Los Angeles Regional Water Quality Control Board ("LARWQCB"). It has been studied under Section 316(b) of the Clean Water Act. It is also the smallest cooling system operating along the Santa Monica bay coastline. Though the 316(b) study was criticized by opposing parties as being too far away and too old to be of value, the truth is that there is no evidence in the record that suggests that the 208 MGD flow in Cooling Intake #1 has or could have a significant adverse effect on the environment. In fact, there are numerous studies and significant evidence that shows clearly that Cooling Intake #1 is safe for the environment. ESPR does not increase the flow volumes beyond 208 MGD; in fact it will not increase the cooling system capacity at all. That is the reason why there are no California Environmental Quality Act issues associated with marine resources in the ESPR project.

Nevertheless, several parties argued that because the flows through Cooling Intake #1 would likely be greater after the new units begin operation than they have been in recent years, that this increase in flow may create the potential for new impacts attributable to this project. This is despite the fact that these alleged new flows are all still well within the studied and permitted flows that ESGS has a right to utilize under its NPDES permit, and despite the fact that ESGS has a 40 plus year operating history and robust data available on marine biology along the Santa Monica Bay coast. In this context, ESP II offered up significant concessions, as enhancements, that were designed to make it easier for the CEC to approve this project because they would know that every argument regarding alleged increased environmental impacts by cooling water use had been eliminated and that ESPR would contribute significantly and positively to the environment. Specifically, ESP II offered a temporary facility wide flow cap, a commitment to the evaluation of entrainment eliminating technology, and a monetary contribution towards advancing the health of the Santa Monica Bay coastal areas. This last summer ESP II further offered more concessions in the form of guaranteeing minimal levels of expenditure under the new Phase II 316(b) regulations.

The voluntary flow cap commenced upon commercial operation, **because that would be the first point in time where the new project would be utilizing any cooling water.** The first and second version of the PMPD retained that commencement point for the flow cap. Now, for some unclear reason, the BIO-3 condition of the RRPMPD has dropped any reference to a triggering event, and the body of the RRPMPD claims that the flow cap is effective upon certification of



the project. As explained above, there is no reason for a flow cap, which is designed to eliminate concern over increased flows triggered by commercial operation of the new facility, to be effective before that commercial operation. Further, the flow cap is a voluntary offer by the applicant that extends to other units at ESPR that the CEC would not otherwise have any authority over.

Is it the intent of The Committee to reduce the production of electricity in Southern California now thus hindering the Governor's efforts to guide California through the continuing energy crisis? Imposing a flow cap, now, at approval, will likely **immediately constrain the operation of the existing units at ESGS** for no environmental purpose and without any legal reason to do so. Because Cooling Intake #2 is larger (400 MGD) it can utilize the available water volumes under the offered flow cap significantly faster. ESP II has preliminarily analyzed the effect of the flowcap being imposed now and is certain that **the operation of Units 3 and 4 would immediately become flow restricted!** ESP II offered the flow cap because it anticipated Units 3 and 4 operating as peakers rather than as base load units once the new units came on line. Even then, the flow cap risked limiting the operation to Units 3 and 4 to less than what California would require, but the risk was less. Now, with the flow cap effective immediately, there is no doubt that Units 3 and 4 will be significantly constrained from operating at even half capacity. Not only is this effect devastating economically to the facility owners, it also disastrous to California. The Governor's office and CAL-ISO are working diligently to provide critical megawatts for the coming summers, especially in Los Angeles. This RRPMPD would go directly against their efforts, and for no legal or environmental reason at all. While ESP II is certainly interested in offering enhancements and conciliatory conditions where feasible, ESP II does not agree to accept any flow limits at ESGS below the levels allowed by the LARWQCB that would commence before commercial operation of the new units. Without ESP II's agreement, the CEC cannot impose such limits because it will get no jurisdictional authority over Units 3 and 4, and because no law requires such flow reductions.

ESP II respectfully requests that the Committee propose and the Commission agree to insert the phrase "*Upon the commencement of commercial operation of Units 5, 6 and 7*" at the beginning of BIO-4. Doing so is in keeping with all previous versions of the PMPD and with all logic, law and policy.

**THE VOLUNTEERED FLOWCAP IS NOT NEEDED ONCE SUBSEQUENT STUDIES CONFIRM AGAIN THAT ESGS HAS NO SIGNIFICANT ADVERSE EFFECT ON THE ENVIRONMENT**

As explained above, ESP II offered the flowcap as an interim assurance regarding arguments that a flow increase would occur and that flow increase would cause significant adverse effects to the marine resources of Santa Monica Bay. The flowcap also responded to the CEC staff and the CCC argument that a new study was needed. Because the cooling systems at ESGS are permitted, well-studied and operational, those arguments and concerns were whimsical at best, and certainly had no legal founding. Thus, the flowcap volunteered by ESP II was offered only

as an interim assurance to The Committee while a new study was completed at the direction of the LARWQCB. ESP II suggested language that would allow the project owner to return to the Commission and seek a removal of the flow cap limitations, once the studies and reductions or enhancements required under the Phase II 316(b) regulations had been implemented by the LARWQCB on ESGS.

The Commission does not currently have jurisdiction over any facilities at ESGS and would obtain only limited jurisdiction over facilities as set by California law. In any case, the LARWQCB would retain the same jurisdiction it has now, namely the permitting and regulation of the cooling systems and their effects on the Santa Monica Bay. ESP II is voluntarily offering a limited authority to the Commission to limit flows through the cooling systems temporarily pending the application of the Phase II 316(b) regulations. The RRPMPD, however, has significantly changed the proposed flowcap and in doing so has exceeded the scope of what the applicant offered. The RRPMPD would replace the wisdom and authority of the LARWQCB, thus infringing upon the jurisdiction of the LARWQCB and upon the rights of the owners of ESGS to have the law fairly and correctly applied. Perhaps most importantly, these deleterious effects of leaving the flowcap in place serve no purpose under the law or under environmental policy. There is no evidence that the cooling systems at ESGS have a significant adverse effect on the environment.

Instead the changes to the flowcap condition have no specific rationale or justification. Does the Committee intend to invade the jurisdictional territory of the LARWQCB and reduce electricity production in California without legal or environmental purpose? ESP II suspects that the Committee had no such intention and respectfully requests that the Committee propose and the Commission agree to incorporate the language in BIO-3 found in the previous versions of the PMPD that allowed the project owner to seek removal of the flowcap in the future. Specifically, the following sentences should be re-added to the end of the BIO-3 condition: *"If future NPDES permitting establishes that an annual flow cap is not necessary to avoid significant impacts, then the project owner shall apply for and receive changes to this Condition of Certification that removes the annual and monthly flow cap requirements. If the NPDES permit for ESGS is changed to incorporate entrainment control technology that confirms less than significant impacts, then the project owner shall apply for and receive changes to this Condition of Certification that removes the annual and monthly flow caps."*

**THE TIMING OF THE 1 MILLION DOLLAR PAYMENT 180 DAYS AFTER APPROVAL IS LEGALLY UNSUPPORTABLE AND CONFLICTS WITH THE ELECTRICITY MARKET DYNAMICS CURRENTLY DRIVING CONSTRUCTION OPPORTUNITY IN CALIFORNIA**

A third significant problem in the RRPMPD is the requirement that the project owner make a payment within a certain number of days of the final decision. The new and significantly changed BIO-1 found in the RRPMPD would require the project owner to pay \$1 Million within

180 days of certification. BIO-1 contains other significant changes including the addition of \$4 Million dollars to what was offered by the applicant. These changes, like some other changes, lack a clear explanation and analysis under the law that justifies or explains them at all. Instead, the changes appear to be driven simply by what the Committee felt would be the maximum sacrifice the Applicant would make or suffer in order to get a decision.

Ostensibly, BIO-1 was modified to provide sufficient funding to the Santa Monica Bay Restoration Commission so that they could complete a Santa Monica Bay wide fish and plankton study. However, even that purpose is ill-explained as to why \$5 Million would be the necessary amount, and certainly the evidentiary record contains no such testimony. In fact it is likely that the needed amount would be much closer to \$2 Million or \$1.5 Million given the costs of recent studies done in the Southern California bight. The additional costs being imposed by the Committee in BIO-1 simply add to the burden that the project owner must carry. Each added cost to this important project makes it more in jeopardy economically. Nevertheless, ESP II could possibly acquiesce to this added enhancement if the timing of payment aligned with the financial realities of developing power plants in California.

The requirement that the project owner pay \$1 Million within 180 days directly conflicts with project owner's right to start construction within three years, lacks any legal authority, and does not allow for the payment to be made out of project financing. It appears to be driven solely by a desire that the SMBRC be able to start a study as soon as possible. That thought too, however, is poorly connected to the realities of completing studies and lacks any substance under the law. Ultimately, ESP II is forced to strongly object to this imposition and respectfully requests that the Committee propose and the Commission agree to connect the first payment under BIO-1 to the start of construction using language similar to: "*within 90 days of the start of construction of the new generating units.*"

#### **OTHER PROBLEMS AND CONFLICTS IN THE RRPMPD**

The above three critical and needed changes are not the only problems or objections that ESP II must respectfully make to the RRPMPD. There are numerous other characteristics of the proposed decision that ESP II must make in order to preserve its rights under the law.

##### **1) RRPMPD contains new evidence or information**

ESP II believes that the Biology section of the RRPMPD incorporates evidence not in the record nor even promoted by a party to the proceeding. Some of this is glaringly obvious. For instance, page 62 contains a chart of the Governing Board Members of the Santa Monica Bay Restoration Commission. ESP II does not believe that information, as well as much of the text found on page 61 and 62, is supported by evidence in the record. The information also suggests that the Committee has done additional research or has received undocumented communications from third parties. ESP II objects to the changes to BIO-1 and BIO-3 in the RRPMPD as being founded upon evidence not in the record.

**2) RRPMPD illegally treats California Coastal Commission comments as 30413(d) reports**

The RRPMPD treats letters and documents submitted by the California Coastal Commission ("CCC") into this proceeding as reports submitted pursuant to section 310413(d) of the Natural Resources Code. Despite ESP II's extensive efforts to show the Committee that treating the CCC comments as 30413(d) reports is a clear and obvious violation of the law and dereliction of the Energy Commission's duties under the law, the RRPMPD does this anyway. The RRPMPD takes this path with one paragraph excerpted from the recent decision in Morro Bay as supporting analysis. The RRPMPD does not address any single, specific legal point made by ESP II, and ultimately, continues to defy the law in this area.

Why does the Committee intend to lead the Commission down this destructive path of ignoring the rule of law? Why does the Committee insist upon unnecessarily and illegally making the permitting process for power plants vastly more complex, difficult and arduous? Why does the Committee insist upon making the Governor's job significantly more difficult at a time where fixing the California energy market is so important? We do not know because the RRPMPD provides no reasons or explanations justifying its actions with regard to the CCC and its interference in the CEC power plant siting process. ESP II objects to this treatment of CCC comments and any resulting impositions and conditions that it has driven.

**3) The RRPMPD should be clear that it does not attempt to assert jurisdiction over the LARWQCB's obligation and responsibility to permit and regulate the intake and outfall structures at ESGS**

ESP II has already explained above that BIO-3 infringes upon the jurisdiction and authority of the LARWQCB by seeking to regulate the design and operation of cooling systems structures subject to NPDES permitting and sections 316(a) and 316(b) of the Clean Water Act among other sections. The sought-after changes to BIO-3 would resolve most of that usurpation of authority. ESP II, however, also feels it is necessary to emphasize the importance that each agency stay within its jurisdiction and authority. BIO-4 also seeks to interfere with the ability of the LARWQCB to independently exert its authority over the cooling systems at ESGS. To the extent that the RRPMPD and the ultimate decision by the Commission attempts to directly regulate the design and operation of the cooling systems at ESGS, ESP II respectfully objects and states its intent to comply with and observe the requirements and authority of the responsible agency, the LARWQCB. The lone exception to this is the limited flowcap that ESP II voluntarily offered into this proceeding, a flowcap significantly different than the one proposed in the RRPMPD. In terms of BIO-4, ESP II notes that it is already in compliance with its requirements since ESGS and its cooling systems are already permitted and operating. Further, in BIO-5, the RRPMPD requires that the Applicant comply with the Phase II 316(b) requirements prior to start of commercial operation of the project. This condition inappropriately usurps authority over the implementation schedule of Phase II 316(b) from the LARWQCB and provides an unrealistic

schedule by which to demonstrate final compliance. Therefore, condition BIO-5 is inappropriate, illegal, and should be deleted from the RRPMPD.

**4) The RRPMPD should be clearer that there are no significant adverse environmental effects being caused by ESPR under CEQA to marine resources.**

The RRPMPD could be misconstrued to imply that the Commission believes that the operation of Cooling Intake #1 at ESGS has and is capable of causing significant adverse environmental harm. This unintended effect could be caused by the imposition of the Biology conditions one through five. These conditions, however, contain only enhancements, most of which were offered by the applicant as voluntary enhancements and improvements. ESP II makes this statement to clarify for future purposes, the true character and purpose behind the Biology conditions: they are not mitigation required under CEQA but are rather enhancements offered by the applicant and enforced by the Commission as conditions to this decision. The existing, permitted and operational cooling systems at ESGS do not cause any significant adverse effects to marine resources. ESPR makes use of this cooling system without any changes or increases in maximum permitted and studied flow rates.

**ATTACHMENT 2  
APPLICANT'S PROPOSED CHANGES TO BIO-1 AND BIO-3**

**BIO-1**

The project owner shall place \$5,000,000 in trust for the Santa Monica Bay Restoration Commission (SMBRC) to assess the ecological condition of the Santa Monica Bay and to develop and implement actions to improve the ecological health of the Bay. At least \$1 million shall be provided within 90 days of start of construction of the new generating units~~180 days after this Decision becomes final~~. At that time, the SMBRC in consultation with the project owner, shall propose a schedule for the payment of the remaining funds; within 30 days after submittal of the proposed schedule to the CPM, the CPM shall approve a schedule, which may be the SMBRC's schedule or modification thereof. The project owner shall comply with the approved schedule...

**BIO-3**

Upon the commencement of commercial operation of Units 5, 6 and 7, C cooling water flows for intakes #1 and #2 combined shall not exceed 126.78 billion gallons per year and shall also be subject to monthly flow volumes not to exceed 7.961 billion gallons in February, 8.313 billion gallons in March, and 8.524 billion gallons in April of any year. If future NPDES permitting establishes that an annual flow cap is not necessary to avoid significant impacts, then the project owner shall apply for and receive changes to this Condition of Certification that removes the annual and monthly flow cap requirements. If the NPDES permit for ESGS is changed to incorporate entrainment control technology that confirms less than significant impacts, then the project owner shall apply for and receive changes to this Condition of Certification that removes the annual and monthly flow caps."

**STATE OF CALIFORNIA**

**Before the Energy Resources  
Conservation and Development Commission**

In the Matter of	) Docket No. 00-AFC-14
	)
Application for Certification of Duke	) PROOF OF SERVICE LIST
Energy for the El Segundo Power Plant	)
Redevelopment Project	)
_____	)

I, declare that on December 21, 2004, I deposited copies of the attached letter Re: **Applicant's Comments to the Second revised Presiding Member's Proposed Decision**, in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

**DOCKET UNIT**

**CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4**

**\*Attn: Docket No.: 00-AFC-14**

**1516 Ninth Street**

**Sacramento, CA 95814-5512**

**e-mail:doCKET@energy.state.ca.us**

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<p>Marc D. Joseph CURE Adams, Broadwell, Joseph &amp; Cardoza 651 Gateway Blvd., Suite 900 South San Francisco, CA 94080 mdjoseph@adamsbroadwell.com</p>	<p>John Theodore Yee, P.E. South Coast Air Quality Mgmt. District 21865 E. Copley Dr. Diamond Bar, CA 91765-4182 jyee@agmd.gov</p>
<p>City of El Segundo Paul Garry (Planning) 350 Main Street El Segundo, CA 90245 Pgarry@elsegundo.org</p>	<p>California State Lands Commission Attn: Dwight Sanders 100 Howe Avenue, Suite 100-South Sacramento, CA 95825</p>
<p>California State Lands Commission Attn: Jane Smith 100 Howe Avenue, Suite 100-South Sacramento, CA 95825 smithj@slc.ca.gov</p>	<p>*California Dept. of Fish &amp; Game Attn: Bill Paznokas 4949 Viewridge Ave. San Diego, CA 92123 wpaznokas@dfg.ca.gov</p>
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I declare under penalty of perjury that the foregoing is true and correct.

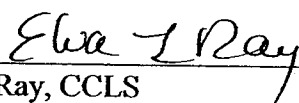
  
Elva Ray, CCLS



EXHIBIT "D"

SPECIAL BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                     )  
  )  
Special Business Meeting            )  
  )  
\_\_\_\_\_                                  )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 23, 2004  
9:07 A.M.

Reported by:  
Peter Petty  
Contract No. 150-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

Arthur H. Rosenfeld

James D. Boyd

John L. Geesman

Jackalyne Pfannenstiel

STAFF PRESENT

William Chamberlain, Chief Counsel

Robert Therkelsen, Executive Director

Garret Shean, Hearing Officer

David Abelson, Senior Staff Counsel

James Reede, Jr., Project Manager

ALSO PRESENT

John A. McKinsey, Attorney  
Stoel, Rives, LLP  
El Segundo Power II LLC

David Lloyd, Secretary  
El Segundo Power II LLC

Tom Luster  
California Coastal Commission

Tracy Egoscue  
Santa Monica Baykeeper

Craig Shuman  
Heal The Bay

Tom Raftican  
United Anglers of Southern California

James Hansen  
City of El Segundo

ALSO PRESENT

Bill Eison  
Residents for a Quality City  
(via teleconference)

Jim Sphoonmaker  
Electric Power CC Staff

Michelle Murphy, Intervenor  
(via teleconference)

Bob Perkins, Intervenor  
(via teleconference)

Laurie Jester  
City of Manhattan Beach  
(via teleconference)

Bill Brand  
(via teleconference)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## I N D E X

	Page
Proceedings	1
Items	1
1 El Segundo Power II LLC Redevelopment Project	1
Adjournment	108
Certificate of Reporter	109

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 changes to the system, including possible  
2 reductions in maximum allowed flows per day.

3 The proposed decision includes a flow  
4 cap that would restrict flows in the cooling  
5 system to recent historical averages plus a three-  
6 month seasonal flow cap. Therefore, the facility,  
7 in our opinion, would not cause a physical change  
8 to the existing environmental setting, and thus  
9 would not significantly impact biological  
10 resources through the operation of the ocean  
11 cooling system.

12 In addition, in conformance with the new  
13 USEPA regulations the project's entrainment  
14 impacts must be reduced by at least 60 percent,  
15 and impingement impacts by at least 80 percent or  
16 the project must achieve alternative compliance  
17 options under the regulations.

18 Further, the project meets the  
19 objectives of the California Coastal Act to  
20 maintain, enhance, and where feasible, restore the  
21 marine environment. The project will maintain the  
22 existing environmental setting and help to restore  
23 and enhance the Santa Monica Bay by providing that  
24 the Santa Monica Bay Restoration Commission assess  
25 the ecological conditions of the Santa Monica Bay



1 back and attempt to change this condition when  
2 we've completed that permitting process.

3 CHAIRMAN KEESE: Okay, we'll look at  
4 your specific language. Because, again, I believe  
5 that was the Committee's desire.

6 MR. MCKINSEY: Okay. Our third issue  
7 also has to do with much of what Commissioner Boyd  
8 described, which was the changes that were made to  
9 our original proposal to provide \$1 million to the  
10 Santa Monica Bay Restoration Commission so that  
11 they could use that money.

12 And like you, the Committee, concluded,  
13 we concluded they were the right group to  
14 effectively use that money in the ways that it  
15 should be used. We proposed it in that they would  
16 have great flexibility on how to use those funds.  
17 And we did that partly because they were not  
18 involved in this permitting process, and thus we  
19 didn't think we had the ability or the time to  
20 develop exactly how they would use it.

21 But most importantly, we proposed that  
22 it be \$1 million, and we proposed that it be  
23 effective upon commercial operation of the new  
24 facility, which was a much farther out date than  
25 the new requirement which is that we have to pay

1       \$1 million within 180 days of today, essentially.

2       And it could be the full \$5 million prior to  
3       construction, which is where we have a huge  
4       stumbling block.

5               We've indicated that we've got some  
6       questions about the need for \$5 million to conduct  
7       these studies. And frankly our own experience  
8       indicates that a good number would probably be in  
9       the area of \$2 million. But that information  
10      isn't in the record, and so we recognize the  
11      frustration and the effort to which the Committee  
12      has attempted to grapple with that and address it.

13             But nevertheless, we have a problem with  
14      the magnitude, but that's nowhere near the problem  
15      we have with the timing. And the reason for this  
16      is because this is intended to be folded into  
17      financing.

18             Over the course of the last four years  
19      the applicant has already invested a tremendous  
20      amount of money directly in the purchasing of ERCs  
21      and property, and indirectly in the pursuit of  
22      this permit. And it's not capable or able to  
23      commit to spending additional money prior to  
24      having a contract and financing this project.

25             And specifically I would say that your

1 own regulations give an applicant five years to  
2 start construction on a project. And requiring  
3 the applicant to pay this sum of money,  
4 specifically when as you've acknowledged it is not  
5 mitigation, it is an enhancement that is intended  
6 will be used to do good, and it's asking the  
7 applicant to do good for an entire Bay and take  
8 upon its shoulders something that would benefit  
9 all the other users of the Bay.

10 And nevertheless, with that context,  
11 you're asking them to pay that immediately upon  
12 certification. And what I'm indicating to you is  
13 that is a tremendous problem for us, that we don't  
14 have the ability to do that.

15 And that that is a nonstarter for us in  
16 terms of actually being able to accomplish this  
17 project.

18 CHAIRMAN KEESE: Mr. McKinsey, it's not  
19 the Committee's desire to tie up \$5 million on  
20 licensure. It's the Committee's desire to see  
21 that the Restoration Commission start promptly  
22 with its study work which can inform their future  
23 activities.

24 So, I will speak for the Committee and  
25 let Mr. Boyd jump in, while the Committee is not

1 facility? Commercial operation.

2 MR. ABELSON: Yes. If you're asking  
3 does staff have a problem with the flow cap going  
4 in upon commercial operation as opposed to at the  
5 time of licensing, I don't think that we have any  
6 opposition to that.

7 CHAIRMAN KEESE: Thank you. Then just  
8 because we have the two of you here, Mr. McKinsey,  
9 you've seen the staff's suggestion, and I'm  
10 thinking in particular at this moment about air.

11 MR. MCKINSEY: Correct, we have,  
12 Chairman.

13 CHAIRMAN KEESE: Do you have any --

14 MR. MCKINSEY: We have two problems with  
15 it. One, the proposed changes by staff on the  
16 construction air quality conditions on the first  
17 blush didn't look that problematic. However,  
18 they're entirely new, they're revamped, and we  
19 just don't have the ability to say that they're  
20 okay now.

21 CHAIRMAN KEESE: Thank you. I think  
22 it's going to be the Committee's recommendation to  
23 the Commission that since we do not have anything  
24 on the record here, if you and your client  
25 accepted them we would incorporate them. If you

1 don't, then it's a subject that has to come back  
2 and be dealt with in the amendment process.

3 And we're not -- since we recognize it's  
4 not on the record --

5 MR. MCKINSEY: I can also indicate that  
6 there is an incorrect statement in the staff's  
7 thing that they say that the FDOC has been  
8 changed. It still has not been changed. And  
9 thus, there are other changes that the staff seeks  
10 that once it gets changed, we are going to have to  
11 come back and make a change in order to  
12 incorporate. And so clearly that would be a great  
13 time to try accomplish all of these things.

14 CHAIRMAN KEESE: Why don't we just leave  
15 that issue to the amendment process.

16 Thank you.

17 I have then three members of the  
18 audience who wish to testify on this issue. And I  
19 have -- I'm sorry, five members in the audience,  
20 and three on the telephone. Just because it works  
21 out simpler that way, I believe we will take those  
22 in the audience first, and we'll start with Mr.  
23 Luster of the California Coastal Commission.

24 MR. LUSTER: Good morning, Chair Keese  
25 and Commissioners. I'm Tom Luster, representing

## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Special Business Meeting; that  
it was thereafter transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
meeting, nor in any way interested in outcome of  
said meeting.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 2nd day of January, 2005.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

EXHIBIT "E"

STATE OF CALIFORNIA - THE RESOURCES AGENCY

Gray Davis, Governor

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

Sacramento CA 95814

website:www.energy.ca.gov

**STATE OF CALIFORNIA****Before the Energy Resources  
Conservation and Development Commission**

In the Matter of:	)	Docket No. 00-AFC-14
	)	PROOF OF SERVICE LIST
of the El Segundo Power Plant	)	[*Revised 9/29/04]
Redevelopment Project	)	
_____	)	

I, \_\_\_\_\_ declare that on \_\_\_\_\_ I deposited copies of the attached  
\_\_\_\_\_ in the United States mail at Sacramento, CA with first class postage  
thereon fully prepaid and addressed to the following:

DOCKET UNIT

Send the original signed document plus the required  
12 copies to the address below:

CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4  
Attn: Docket No. 00-AFC-14  
1516 Ninth Street  
Sacramento, CA 95814-5512

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I declare under penalty of perjury that the foregoing is true and correct.

---

[signature]

\* \* \* \*

## INTERNAL DISTRIBUTION LIST

FOR YOUR INFORMATION ONLY! Parties DO NOT mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:

WILLIAM J. KEESE  
Chairman & Presiding Member  
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Commissioner & Associate Member  
MS-34

Garret Shean  
Hearing Officer  
MS-9

James Reede  
Project Manager  
MS-15

David Abelson  
Staff Counsel  
MS-14

## PUBLIC ADVISER

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1516 Ninth Street, MS-12  
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Items marked with \* and in **Bold** indicated Revisions to POS List, i.e. updates, additions and/or deletions.

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